

Message Text

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ACTION IO-06

INFO OCT-01 ISO-00 AGR-05 CEA-01 CIAE-00 COME-00 DODE-00

EB-04 FRB-01 H-01 INR-05 INT-05 L-01 LAB-01 NSAE-00

NSC-05 PA-01 RSC-01 AID-05 CIEP-01 SS-15 STR-01

TAR-01 TRSE-00 USIA-06 PRS-01 SP-02 FEAE-00 OMB-01

SWF-01 AF-04 ARA-06 EA-06 EUR-08 NEA-06 OIC-01 XMB-02

DRC-01 /106 W

----- 038059

R 181518Z OCT 74

FM USMISSION USUN NY

TO SECSTATE WASHDC 6523

INFO USMISSION GENEVA

USMISSION EC BRUSSELS

USMISSION OECD PARIS

AMEMBASSY MEXICO CITY

LIMITED OFFICIAL USE SECTION 1 OF 2 USUN 4201

TREASURY PASS BRADFIELD

E.O. 11652: N/A

TAGS: UNCTAD, EGEN, ETRD

SUBJECT: CHARTER OF ECONOMIC RIGHTS AND DUTIES

1. AT MEETING OF GROUP B A.M. OCT 17, STANFORD (CANADA)
ON BEHALF OF CANADA AND AUSTRALIA, STATED FOLLOWING TEXT
REPRESENTS A POSITION THAT CANADA AND AUSTRALIA COULD
AGREE ON, AND THAT, AT APPROPRIATE STAGE, THEY WILL WISH
TO BRING IT FORWARD.

2. BEGIN TEXT:

"PARAGRAPH 2

1. EVERY STATE HAS AND SHALL FREELY EXERCISE FULL PER-
MANENT SOVEREIGNTY, INCLUDING POSSESSION, USE AND
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DISPOSAL, OVER ALL ITS WEALTH, NATURAL RESOURCES

AND ECONOMIC ACTIVITIES.

(MEXICAN TEXT VERBATIM)

2. EVERY STATE HAS THE RIGHT:

(A) TO REGULATE AND EXERCISE AUTHORITY OVER FOREIGN INVESTMENT WITHIN ITS NATIONAL JURISDICTION IN ACCORDANCE WITH ITS LAWS AND REGULATIONS AND IN CONFORMITY WITH ITS DEVELOPMENT OBJECTIVES AND PRIORITIES.

(MEXICAN TEXT VERBATIM)

(B) (THIS IS THE INVESTMENT AGREEMENT PARA).

(C) TO REGULATE AND SUPERVISE THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS WITHIN ITS NATIONAL JURISDICTION AND TAKE MEASURES TO ENSURE THAT SUCH ACTIVITIES COMPLY WITH ITS LAWS, RULES AND REGULATIONS AND CONFORM WITH ITS ECONOMIC AND SOCIAL POLICIES. TRANSNATIONAL CORPORATIONS SHALL NOT INTERVENE IN THE INTERNAL AFFAIRS OF A HOST STATE. EVERY STATE SHOULD, WITH FULL REGARD FOR ITS SOVEREIGN RIGHTS, CO-OPERATE WITH OTHER STATES IN THE EXERCISE OF THE RIGHT SET FORTH IN THIS SUB-PARAGRAPH.

(D) TO NATIONALIZE, EXPROPRIATE OR REQUISITION FOREIGN PROPERTY, PROVIDED THAT COMPENSATION IN AN AMOUNT JUSTIFIED IN THE LIGHT OF ALL RELEVANT CIRCUMSTANCES, SHALL BE APID BY THE STATE TAKING SUCH MEASURES.

(THIRD ALTERNATIVE)

(E) SECOND PART: IN CASES WHERE THE TREATMENT OF FOREIGN INVESTMENT OR COMPENSATION THEREFORE IS IN CONTROVERSY, RECOURSE WILL BE HAD TO THE NATIONAL JURISDICTION OF THE STATE TAKING THE MEASURES IN QUESTION, UNLESS THERE IS AGREEMENT TO SEEK A SETTLEMENT THROUGH OTHER PEACEFUL MEANS ON THE BASIS OF THE SOVEREIGN EQUALITY OF STATES AND IN ACCORDANCE WITH THE PRINCIPLE OF FREE CHOICE OF MEANS.

3. IN RESPECT OF THE FOREGOING RIGHTS, ALL STATES SHALL FULFILL IN GOOD FAITH THEIR INTERNATIONAL OBLIGATIONS AND SHALL REFRAIN FROM ANY FORM OF COERCION. (ABBREVIATED VERSION OF 'GENEVA' TEXT -BASIC DOCUMENT, PAGE 7, ALTERNATIVE 4)." END TEXT.

3. CANADA (STANFORD) EXPLAINED THAT TEXT WAS MEANT TO INDICATE THE OUTER LIMITS OF THE CANADIAN AND AUSTRALIAN POSITIONS, AT A TIME WHEN NEGOTIATIONS ON PARA. 2 SEEMED LIMITED OFFICIAL USE

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DEADLOCKED. AUSTRALIA (TEESE) ADDED THAT THE TEXT WAS TO SET THE RECORD STRAIGHT AS TO THE POSITION OF BOTH COUNTRIES. BOTH NOTED THAT IN ANY CASE THE SUBSTANTIVE POSITIONS OF THEIR COUNTRIES WERE "SOFTER" THAN THOSE OF OTHER GROUP B MEMBERS.

4. JAPAN (MIYAKE) RESPONDED BY NOTING THAT GROUP SHOULD NOT ALLOW ITSELF TO BE PRESSURED TOWARD SUCH A COMPROMISE BY THE G-77, WHICH WAS TAKING HARD-LINE POSITIONS JUST AS

IT HAD DONE IN THE SIXTH SPECIAL SESSION, HE VIEWED THE WESTERN CONCESSIONS, TOGETHER WITH THE CONSENSUS PROCEDURE, OF THE SPECIAL SESSION, AS A SERIOUS MISTAKE.

5. FRANCE (CHOLLET) STATED THAT IT WOULD VOTE AGAINST THE CANADIAN-AUSTRALIAN TEXT IF IT WERE ADVANCED.

6. THE U.S. DEL POINTED OUT THAT THE G-77 WOULD SEE THE CANADIAN-AUSTRALIAN TEXT EITHER AS EVIDENCE THAT GROUP B AS SPLITTING, OR AS AN INDICATION OF A WILLINGNESS TO MAKE CONCESSIONS. IN BOTH CASES THE G-77 WOULD BE INDUCED TO PRESS FOR MORE CONCESSIONS. THE U.S. DEL ADDED THAT THE U.S., CONSIDERING THE TEXT AS A WHOLE, WOULD PROBABLY BE CONSTRAINED TO VOTE AGAINST IT. IN RESPONSE TO THE CLAIM THAT IT WAS NECESSARY TO CREATE A RECORD, U.S. DEL NOTED THAT A RECORD COULD BE CREATED JUST BEFORE, OR EVEN AFTER, A VOTE ON THE SECOND COMMITTEE, AND THAT THERE WAS NO NEED TO SUBMIT THE TEXT AT THIS TIME, OR ANY TIME SOON.

7. UK (FREELAND) JOINED IN URGING THAT CANADA AND AUSTRALIA NOT TABLE THE TEXT AT THIS TIME.

8. AT CLOSE OF GROUP B MEETING, U.S DEL MADE THE FOLLOWING PROCEDURAL PROPOSALS, WHICH WERE ACCEPTED AS APPROACH GROUP B SHOULD TAKE:

(A) THE WORKING GROUP SHOULD ADJOURN FRIDAY EVENING UNLESS THERE WAS REAL INDICATION THAT SIGNIFICANT PROGRESS COULD BE MADE IN SATURDAY SESSION.

(B) GROUP B SHOULD FORMALLY INDICATE THAT IT WOULD ACCEPT ANOTHER SESSION OF THE WORKING GROUP.

(C) GROUP B SHOULD INDICATE THAT, WHILE IT DID NOT RECOMMEND VOTING ON THE CHARTER AT THIS SESSION OF UNGA, IT WAS READY TO VOTE IF THE GROUP OF 77 INSISTED ON DISPOSITIVE ACTION IN 1974;

(D) GROUP B SHOULD OPPOSE SECOND COMMITTEE RENEGOTIATION OF THE CHARTER ON THE GROUND THAT 140 STATES WILL NOT AGREE ON WHAT 40 STATES COULD NOT AGREE ON.

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9. IN INVESTMENT SUB-GROUP --WITH GROUP B MEETING SEPARATELY FROM THE 77 AND THE CHAIRMAN "SHUTTLE" BETWEEN THE TWO GROUPS--CHAIRMAN MULIRO PROPOSED THE FOLLOWING TEXT:

"PARAGRAPH 2

(1) EVERY STATE ENJOYS FULL PERMANENT SOVEREIGNTY. ACCORDINGLY, EVERY STATE IS ENTITLED TO THE POSSESSION AND FULL USE AND DISPOSAL OF ITS WEALTH AND NATURAL RESOURCES AS WELL AS TO FULL CONTROL OVER ITS NATIONAL ECONOMY.

(2) EACH STATE HAS THE RIGHT:

(A) TO REGULATE FOREIGN INVESTMENT WITHIN ITS NATIONAL JURISDICTION IN CONFORMITY WITH ITS DEVELOPMENT OBJECTIVES AND PRIORITIES, AND TO ENSURE THAT FOREIGN INVESTORS COMPLY FULLY WITH ITS LAWS AND REGULATIONS;

(B) TO ENTER FREELY INTO INVESTMENT AGREEMENTS
RELATING TO THE IMPORT OF FOREIGN CAPITAL, IN
ACCORDANCE WITH THE PRINCIPLES OF SAFEGUARDING NATIONAL
SOVEREIGNTY AND DEVELOPING THE NATIONAL
ECONOMY OF THE HOST STATE, WHICH AGREEMENTS SHALL
BE OBSERVED IN GOOD FAITH;

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ACTION IO-06

INFO OCT-01 ISO-00 AGR-05 CEA-01 CIAE-00 COME-00 DODE-00

EB-04 FRB-01 H-01 INR-05 INT-05 L-01 LAB-01 NSAE-00

NSC-05 PA-01 RSC-01 AID-05 CIEP-01 SS-15 STR-01

TAR-01 TRSE-00 USIA-06 PRS-01 SP-02 FEAE-00 OMB-01

SWF-01 AF-04 ARA-06 EA-06 EUR-08 NEA-06 OIC-01 XMB-02

DRC-01 /106 W

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(C) TO REGULATE AND SUPERVISE THE ACTIVITIES OF
TRANSNATIONAL CORPORATIONS WITHIN ITS NATIONAL
JURISDICTION AND TAKE MEASURES TO ENSURE THAT
SUCH ACTIVITIES COMPLY FULLY WITH ITS LAWS,
RULES AND REGULATIONS AND CONFORM WITH ITS
ECONOMIC AND SOCIAL POLICIES. TRANSNATIONAL
CORPORATIONS SHALL NOT INTERVENE IN THE INTERNAL
AFFAIRS OF A HOST STATE. EVERY STATE SHOULD,
WITH FULL REGARD FOR ITS SOVEREIGN RIGHTS,

COOPERATE WITH OTHER STATES IN THE EXERCISE OF
THE RIGHT SET FORTH IN THIS SUB-PARAGRAPH.

(D) ALTERNATIVE 1

TO NATIONALIZE, EXPROPRIATE OR REQUISITION FOREIGN
PROPERTY, IN WHICH CASE COMPENSATION SHALL BE
DETERMINED AND PAID IN THE LIGHT OF ALL RELEVANT
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CIRCUMSTANCES.

ALTERNATIVE 2

(D) TO NATIONALIZE, EXPROPRIATE OR REQUISITION FOREIGN
PROPERTY, IN WHICH CASE COMPENSATION SHALL BE
DETERMINED AND PAID IN THE LIGHT OF ALL RELEVANT
CIRCUMSTANCES.

IN CASES IN WHICH THE MATTER OF COMPENSATION IS IN
CONTROVERSY, RECOURSE SHALL BE HAD TO THE NATIONAL
JURISDICTION OF THE HOST STATE. THE SETTLEMENT OF
DISPUTES REMAINING UNRESOLVED SHALL BE SOUGHT BY THE PARTIES THROUGH
OTHER PEACEFUL MEANS, ON THE BASIS OF THE SOVEREIGN EQUALITY
OF STATES AND IN ACCORDANCE WITH THE PRINCIPLE OF FREE
CHOICE OF MEANS.

(3) ALTERNATIVE 1

IN RESPECT OF THE FOREGOING RIGHTS, ALL STATES SHALL
FULFILL IN GOOD FAITH THEIR INTERNATIONAL OBLIGATIONS.
ALL STATES SHALL ALSO REFRAIN FROM ANY FORM OF COERCION.

ALTERNATIVE 2

IN RESPECT OF THE FOREGOING RIGHTS, ALL STATES SHALL
FULFILL IN GOOD FAITH THEIR INTERNATIONAL OBLIGATIONS.
ALL STATES SHALL ALSO REFRAIN FROM ANY FORM OF COERCION
AGAINST STATES EXERCISING THESE RIGHTS. "

10. GROUP B AGREED THAT CHAIRMAN PUTMAN (BELGIUM) SHOULD
INFORM AMB. MULIRO THAT THE TEXT WOULD NOT BE ACCEPTABLE
BUT REQUIRED IMPORTANT MODIFICATIONS. PUTMAN PUT TO
MULIRO THE VARIOUS OBVIOUS REVISIONS GROUP B WOULD
REQUIRE, SUCH AS QUALIFYING COMPENSATION BY "JUST".
CAULFIELD (SECRETARIAT) REPORTED THAT THE G-77'S RESPONSE
EVEN TO MULIRO'S TEXT WAS "NEGATIVE."

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